

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Immediate Relief filed by the	)	
State of Tennessee	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	CC Docket No. 97-21
Changes to the Board of Directors of the	)	
National Exchange Carrier Association, Inc.	)	

**BELLSOUTH CORPORATION'S PETITION FOR CLARIFICATION**

BellSouth Corporation ("BellSouth") hereby files its Petition for Clarification of the Commission's July 2, 2003 Order ("Order") in the above-referenced docket granting, in part, the state of Tennessee's request for a Good Samaritan to stand in the shoes of its current service provider ENA. In support of its Petition, BellSouth states as follows:

**FACTS**

On April 17, 2003, Tennessee filed a Petition with the Commission seeking immediate relief to avoid discontinuance of the state's K-12 Internet service prior to the end of the current school year. *Order*, at ¶ 12. Tennessee requested that a substitute service provider be permitted to "step into the shoes of ENA" for the "purpose of receiving and distributing universal service funds to subcontractors and others that are necessary to keep the State's network operating." *Order*, at ¶ 12. Specifically, Tennessee proposed adapting USAC's Good Samaritan policy to the current situation such that a common carrier could be permitted to receive funds from USAC for services rendered and then distribute those funds to the subcontractors that provided and continued to provide service to Tennessee throughout the funding year. *Order*, at ¶ 13.

In response to the Petition, the Commission held that “it is appropriate to apply a modification of the Good Samaritan policy in this instance.” *Order*, ¶ 19. As a result of this holding, USAC, after appropriate review, “may disburse funds to the designated common carrier for payment to ENA’s subcontractors.” *Order*, at ¶ 19.

During the pendency of Tennessee’s Petition, the state informed the Commission that it had approached BellSouth Corporation, who is one of the major ENA subcontractors, about serving as the substitute service provider, and that BellSouth had agreed in principle to accept this role subject to the preparation of appropriate contracts. *Order*, at fn. 26. Thus, BellSouth has standing to file this Petition.

### **DISCUSSION**

BellSouth respectfully requests that the Commission clarify that if BellSouth were to assume the Good Samaritan role in this instance, BellSouth would not be subject to any Commitment Adjustment (“COMAD”) liability should USAC seek reimbursement of disbursed funds to the state of Tennessee for any reason.<sup>1</sup> As the Commission stated, “[t]he role of the Good Samaritan is simply to receive the BEAR payment from SLD and pass the reimbursement through to the applicant.” *Order*, at ¶ 6. By serving as the Good Samaritan in this instance, BellSouth understands that it is not assuming any responsibility to collect funds disbursed in error by USAC to the state of Tennessee, and that should USAC need to issue COMAD letters, it will issue such letters to the service providers and not the Good Samaritan.<sup>2</sup>

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<sup>1</sup> The Commission has specifically reserved the right to seek such reimbursement noting that “[i]f it is ultimately determined that Tennessee, ENA, or other party has violated any program requirements, the Commission shall take all appropriate to address that wrongdoing, including, if merited, seeking reimbursement of disbursed funds.” *Order*, at ¶ 23.

<sup>2</sup> BellSouth notes that this Petition for Clarification would apply only to the funds that it passes through its role as Good Samaritan and not to the funds it receives in its role as a service provider.

Such a clarification makes sense in light of the role of the Good Samaritan. The Good Samaritan provision was adopted to mitigate harm to third parties in situations in which the original service provider "originally selected by an applicant has gone out of business or has filed for bankruptcy protection before processing BEAR payment(s) for the applicant." *Order*, at ¶ 6. The Good Samaritan provision allows for the orderly and continued functioning of SLD funding in situations in which funding would otherwise be jeopardized.

For these reasons, it is important that providers not be deterred from assuming the role of the Good Samaritan. In this case, for example, it would not make economic sense for BellSouth to agree to serve as the Good Samaritan if, by assuming that role, BellSouth subjected itself to COMAD liability. Consequently, BellSouth requests that the Commission clarify its Order to make clear that the assumption of the Good Samaritan role in this case does not subject the Good Samaritan to COMAD liability.

This 30<sup>th</sup> day of September, 2003.

Respectfully submitted,  
BELLSOUTH CORPORATION

By: /s/Lisa Foshee  
LISA FOSHEE  
675 West Peachtree Street  
Suite 4300  
Atlanta, Georgia 30375  
404-335-0754

JONATHAN BANKS  
1133 21<sup>st</sup> Street, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 463-4182

Dated: September 30, 2003

## **CERTIFICATE OF SERVICE**

I do hereby certify that I have this 30<sup>th</sup> day of September 2003 served a copy of the foregoing **BELLSOUTH CORPORATION'S PETITION FOR CLARIFICATION** via electronic mail to the parties listed below:

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Room TW-B204  
Washington, DC 20554

Qualex International  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554

/s/Lynn Barclay  
Lynn Barclay